

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

October 28, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 10HD-166

HAWAII

Grant of Term, Non-Exclusive Easement to Jeffrey A. Frederick, Trustee of the Helen J. Thomas Maddock Revocable Trust, dated May 12, 1981 for Seawall Encroachment Purposes, Puako Beach Lots, Lalamilo, South Kohala, Hawaii, Tax Map Key: 3rd/ 6-9-001: portion of 002.

APPLICANT:

Jeffrey A. Frederick, Trustee of the Helen J. Thomas Maddock Revocable Trust, dated May 12, 1981 (Applicant).

LEGAL REFERENCE:

Section 171-13, 53(b), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Puako Beach Lots, Lalamilo, South Kohala, Hawaii, identified by Tax Map Key: 3rd/ 6-9-001: portion of 002, as shown on the attached map labeled **Exhibit A**.

AREA:

.0055 acres or 239 square feet, more or less.

ZONING:

State Land Use District:	Urban
County of Hawaii CZO:	Open

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES ____ NO X

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exemption Notification attached below as **Exhibit B**.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;

REMARKS:

On May 4, 2010, the Hawaii District Land Office received a copy of a correspondence between the Office of Conservation and Coastal Lands (OCCL) and the Helen J. Thomas Maddock Revocable Trust (Maddock Trust), concerning suspect shoreline encroachments of an existing seawall. **(Exhibit C)** OCCL notified Maddock Trust that it had determined that there appeared to be an approximate 239 square feet of encroachment (seawall), makai of their private property, located on State land. According to information provided, the subject rock wall was originally constructed in 1966. Repair and reinforcement work was done on the wall in 1969. Based on the supporting documents, the County of Hawaii Planning Department determined that the original wall was constructed prior to June 22, 1970, and therefore, is legal under the Hawaii County Planning Department's Rules of Practice and Procedure.

According to a March 8, 1974 letter from H. Moniz (landowner's contractor) to the Board of Land and Natural Resources (BLNR), a 19-inch by 4-feet high wall was constructed on the makai side to protect the existing wall from breaking. Since 1974, the top portion of the existing seawall had been capped, repaired, and refurbished. The capping appears to also include a portion of the seawall that is makai of the subject property boundary, which is within the State's jurisdiction.

Since the County of Hawaii has determined that the original wall was constructed legally, the OCCL will not pursue this matter as a Conservation District violation. Additionally, it is clear the applicant and the agent have shown good faith in attempting to rectify the encroachment. Therefore, DLNR does not consider the encroachment a Conservation District violation and will not be asking for an after-the-fact Conservation District Use Application to resolve this matter.

On May 20, 2010, Roy A. Vitousek III of Cades Schutte, LLP, submitted an application on behalf of Jeffry A. Frederick, Trustee of the Helen J. Thomas Maddock Revocable Trust, dated May 12, 1981, requesting an easement over portions of the above-mentioned seawall. The Maddock Trust property is identified as Tax Map Key: (3) 6-9-004: 010, and the State Beach Reserve is identified as Tax Map Key: (3) 6-9-001: 002.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17, which established criteria for imposing fines for encroachments, staff is not recommending a fine even if the subject encroachment is over 100 square feet. Decision is based on OCCL's and County of Hawaii's determination that there were no violations as the seawall was legally constructed. Construction of the wall is not negatively impacting the beach resources and/or public access. It is possible, removal of the wall will have a negative effect on the remaining, mauka section of seawall, as it will likely be destabilized.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.


On September 10, 2010, staff solicited comments from various government agencies and interest groups. To date, no comments were received.

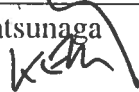
RECOMMENDATION: That the Board:

1. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (3) 6-9-004:010, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Jeffry A. Frederick, Trustee of the Helen J. Thomas Maddock Revocable Trust, dated May 12, 1981, covering the subject area for seawall encroachment purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (3) 6-9-004: 010, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent 

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson 

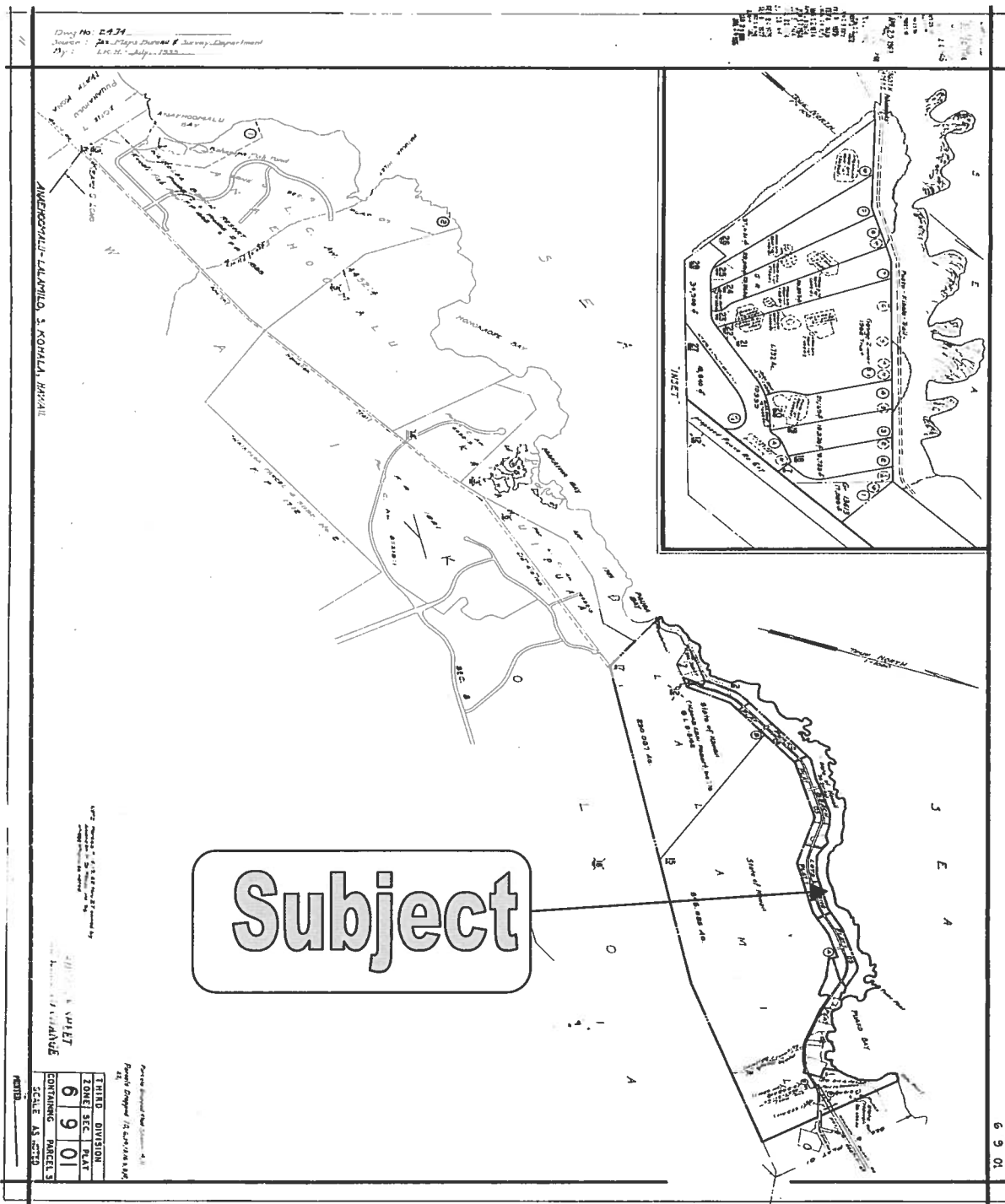


EXHIBIT A

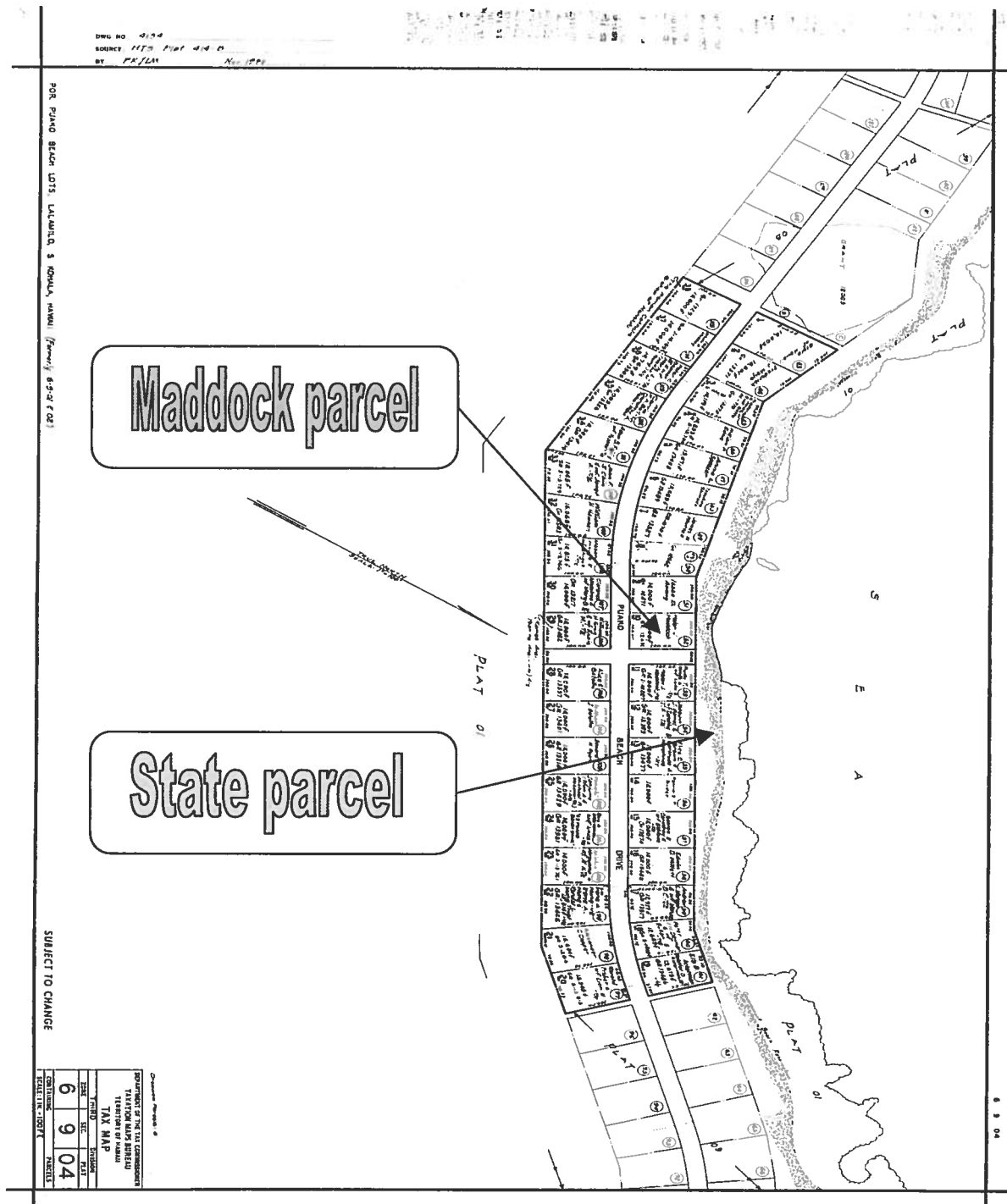


EXHIBIT A

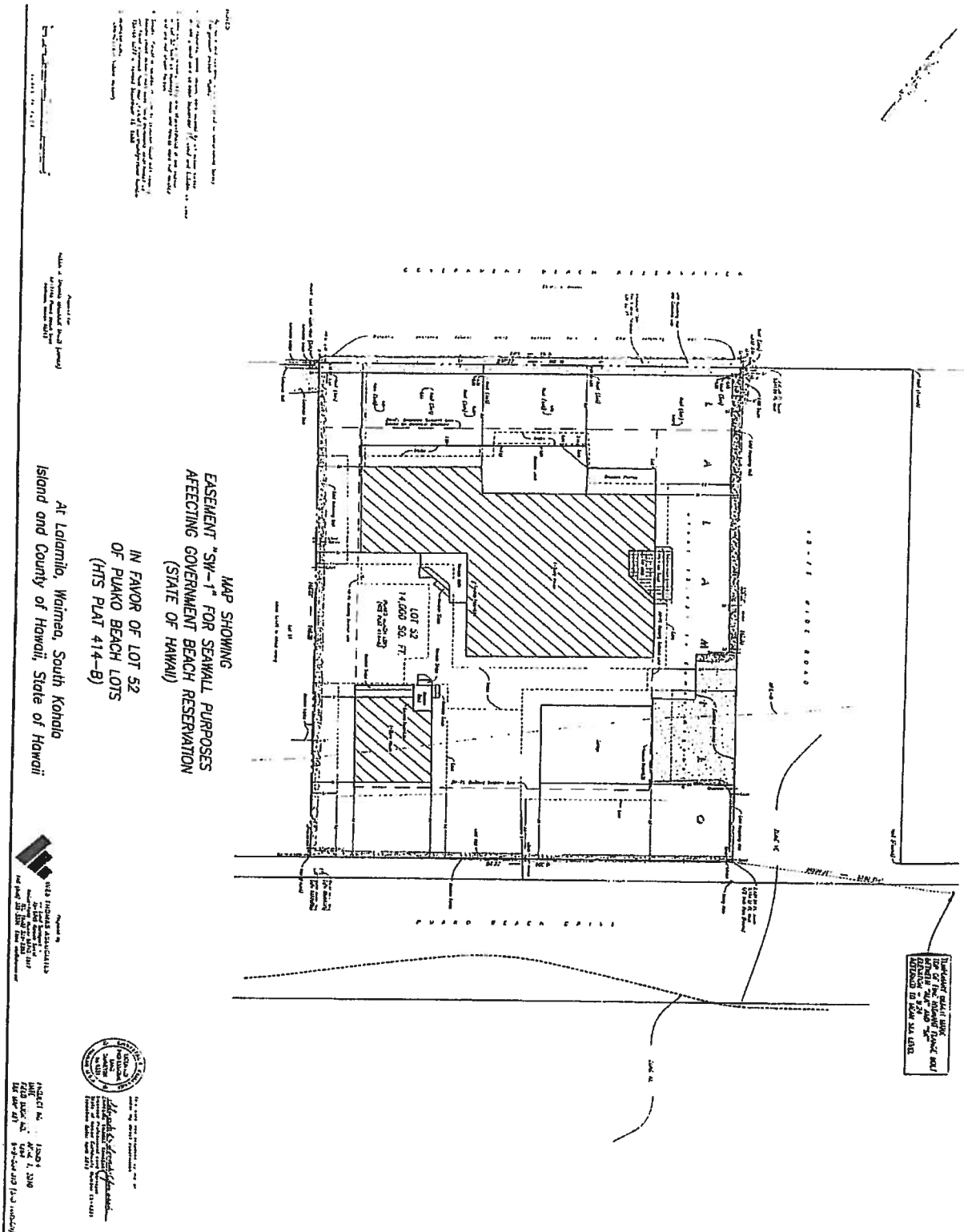
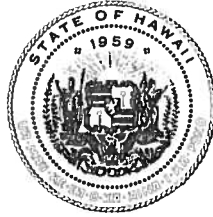


EXHIBIT A

LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THIELIN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

October 14, 2010

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title:

Grant Of Term, Non-Exclusive Easement For Seawall
Encroachment Purposes to Helen J. Thomas Maddock
Revocable Trust.

Project / Reference No.:

PSF No.: 10HD-166

Project Location:

Puako Beach Lots, Lalamilo, South Kohala, Hawaii, Tax Map
Key: (3)6-9-001: portion of 002.

Project Description:

Grant of Term, Non-Exclusive Easement for Seawall
Encroachment.

Chap. 343 Trigger(s):

Use of State Lands.

**Exemption Class No.
and Description:**

In accordance with the Division of Land Management
Environmental Impact Statement Exemption List, approved by
the Environmental Council and dated April 28, 1986, the
subject project is considered to be exempt from the preparation
of an environmental assessment pursuant to:

Exemption Class No. 1, which states, "Operations, repairs or
maintenance of existing structures, facilities, equipment or
topographical features, involving negligible or no expansion or
change of use beyond that previously existing." and
Exemption Class No. 4, which states, "Minor alterations in
the conditions of land, water or vegetation."

**Exemption Item Description
from Agency Exemption List:**

Operations, repairs or maintenance of existing structures,
facilities, equipment or topographical features, involving

EXHIBIT "B"

negligible or no expansion or change of use beyond that previously existing.

Consulted Parties:

Minor alterations in the conditions of land, water or vegetation. The County of Hawaii, Planning Department and the Office of Conservation and Coastal Lands were consulted as a source authority having jurisdiction or expertise in this matter, and both concur that the exemption identified above is applicable to and appropriate for the proposed issuance of an easement.

Recommendation:

The Helen J. Thomas Maddock Revocable Trust requires an easement over portions of an existing seawall to resolve an encroachment into an abutting State property.

It is recommended that the Land Board find that the issuance of an easement is exempt from Chapter 343, HRS, as it will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

Laura H. Thielen, Chairperson

Date

EXHIBIT B

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

2010 MAY 10 P 12:40

REF:OCCL:AB

Encroachment HA-10-4

MAY - 4 2010

Helen J. Thomas Maddock Revocable Trust
c/o Roy A. Vitousek III
Cades Schutte LLP
75-170 Hualalei Road, Suite B-303
Kailua-Kona, Hawai'i 96740

SUBJECT: Shoreline Encroachment at 69-1745 Puakō Beach Drive, Puakō Beach Lots, Lālāmilo, South Kohala, Hawai'i, TMK: (3) 6-9-004:010

Dear Mr. Vitousek:

The Department of Land and Natural Resources (DLNR) Office of Conservation and Coastal Lands (OCCL) has reviewed the submitted documentation regarding your request to resolve the shoreline encroachment at 69-1745 Puakō Beach Drive, Puakō Beach Lots, Lālāmilo, South Kohala, Hawai'i, TMK: (3) 6-9-004:010.

There appears to be 239 square feet of encroachment (seawall), makai of the subject property, located on State land.

According to the information provided, the subject rock seawall was originally constructed in 1966. Repair and reinforcement work was done on the wall in 1969. Based on the supporting documentation provided, the County of Hawai'i Planning Department determined, by letter on December 20, 2006, that the original wall was constructed prior to June 22, 1970, and therefore, is legal under the Hawai'i County Planning Department's Rules of Practice and Procedure.

According to a March 8, 1974 letter from H. Moniz (landowner's contractor) to the Board of Land and Natural Resources (BLNR), a 19-inch by 4-feet high wall was constructed on the makai side to protect the existing wall from breaking. The County has determined that this makai portion of the wall was constructed after June 22, 1970 and is within the State's jurisdiction. The OCCL concurs with this determination.

Since 1974, the top portion of the existing seawall has been capped, repaired, and refurbished. The capping appears to also include the portion of the seawall that is makai of the subject property boundary within the State's jurisdiction.

EXHIBIT C

Helen J. Thomas Maddock Revocable Trust
Page 2 of 3

Encroachment: HA-10-4

Since the County of Hawai'i has determined that the original wall was constructed legally, the OCCL will not pursue this matter as a Conservation District violation. Additionally, it is clear the applicant and the agent have shown good faith in attempting to rectify the encroachment. Therefore, the DLNR does not consider the encroachment a Conservation District violation and will not be asking for an after-the-fact Conservation District Use Application to resolve this matter.

The Board of Land and Natural Resource (BLNR) established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply a "no tolerance" policy for recent or new unauthorized shoreline structures.

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted to the satisfaction of OCCL staff.

Surrounding Land Uses:

The surrounding land uses are primarily residential. The subject property is part of the Puakō Beach Lots subdivision. There is a residential property to the south, Puakō Beach Road to the east, a 40-foot wide public access to the north, and a government beach reserve to the west.

Beach Resources:

The beach resource in this area is poor. The ocean contacts the toe of the wall except for extreme low tides.

Public Access:

There is a County-maintained 40-foot wide public access to the shoreline located north of the subject property. Currently, the owners allow public access along the seawall for the shore fronting the subject property.

Effect of Removing the Encroachment on:

Beach Resources: Removal of the encroaching, makai section of the wall would not improve the beach resource, as there would still be the mauka section of the wall, and currently there is no beach fronting the existing wall.

Public Access: OCCL staff has determined that removal of the encroachment would have no improvement to public access. Because lateral access is currently allowed on the seawall,

EXHIBIT C

Helen J. Thomas Maddock Revocable Trust
Page 3 of 3

Encroachment: IIA-10-4

removing the encroaching, makai face of the wall would not change the conditions makai of the wall and would narrow the cap atop the wall.

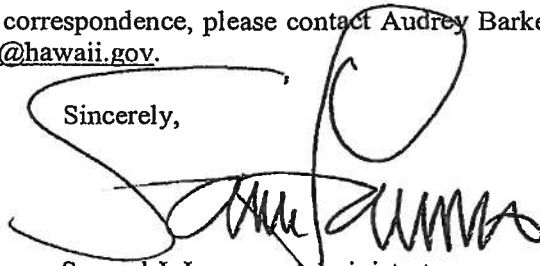
Effect on Adjacent Properties: It is unknown what the impacts would be to adjacent properties upon removal of the improvements. It is possible that the removal will have a negative effect on the remaining, mauka section of seawall, as it will likely be destabilized. It is unlikely that removal of the encroaching section of the wall would have a negative impact on the south neighbor's wall, as it extends well makai of the neighbor's wall. It is unknown what impact it would have on the northern access, as that information was not provided.

Upon review and careful consideration of the information gathered on this case, staff has determined that the requirements stated in Hawai'i Revised Statutes (HRS) §205A, §183C, and the OCCL's evaluation criteria would support a disposition request being processed for the encroachment.

Please contact the DLNR Hawai'i District Land Office at (808) 974-6203 regarding the processing of an easement. If you do not pursue an easement, you will be required to remove the encroachment. For regulatory purposes, you should also contact the Hawai'i County Department of Planning for any future development or improvement activities within the Shoreline Management Area (SMA) area.

Should you have any questions regarding this correspondence, please contact Audrey Barker of our office at (808) 587-0377 or audrey.t.barker@hawaii.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Samuel J. Lemmo', is written over a horizontal line.

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

C: Chairperson
HDLO
OHA
Hawai'i Planning Department

EXHIBIT C